

The Principal Deputy Assistant Administrator signed the following notice on May 16, 2008 and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the notice, it is not the official version of the notice for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2008-0380; FRL -]

Notice of Receipt of a Request from the State of Texas for a Waiver of a Portion of the Renewable Fuel Standard

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: In accordance with section 211(o)(7) of the Clean Air Act (the Act), 42 U.S.C. 7545(o)(7), EPA is issuing a notice of receipt of a request for a waiver of 50 percent of the renewable fuel standard (RFS) "mandate for the production of ethanol derived from grain."

The request has been made by the Governor of the State of Texas. Section 211(o)(7)(A) of the Act allows the Administrator of the EPA to grant the waiver if implementation of the national RFS requirements would severely harm the economy or environment of a state, a region, or the United States, or if EPA determines that there is inadequate domestic supply of renewable fuel. EPA is required by the Act to provide public notice and opportunity for comment on this request.

Dates: *Comments.* Written comments must be received on or before 30 days after publication in the Federal Register.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0380, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2008-0380, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0380. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9303; fax number: (202) 343-2802; email address: caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

(A) How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2008-0380, which is available for online viewing at www.regulations.gov, or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Air and Radiation Docket is 202-566-1742.

Use www.regulations.gov to obtain a copy of the waiver request, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

(B) What Information is EPA Particularly Interested in?

On April 25, 2008, the Governor of Texas submitted a request to the Administrator under section 211(o) of the Act for a waiver of 50 percent of the RFS “mandate for the production of ethanol derived from grain.” The request includes statements regarding the economic impact of higher corn prices in Texas. This request has been placed in the public docket.

Pursuant to section 211(o)(7) of the Act, EPA specifically solicits comments and information to enable the Administrator to determine if the statutory basis for a waiver of the national RFS requirements has been met and, if so, the extent to which EPA should exercise its discretion to grant a waiver. Section 211(o)(7) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the requirements of the national RFS at 40 CFR 80.1105, in whole or in part, upon petition by one or more States. A waiver may be granted if the Administrator determines, after public notice and an opportunity for public comment, that implementation of the RFS requirements would severely harm the economy or environment of a state, a region, or the United States; or that there is an inadequate domestic supply of renewable fuel. The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver within 90 days of receiving it. If a waiver is granted, it can last no longer than one year unless it is renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy. The RFS for 2008 was published in the Federal Register on February 14, 2008 (73 FR 8665) and was intended to lead to the use of nine (9) billion gallons of renewable fuel in 2008.

EPA requests comment on any matter that might be relevant to EPA's action on the petition, specifically including (but not limited to) information that will enable EPA to:

- (a) evaluate whether compliance with the RFS is causing severe harm to the economy of the State of Texas;
- (b) evaluate whether the relief requested will remedy the harm;
- (c) determine to what extent, if any, a waiver approval would change demand for ethanol and affect corn or feed prices; and
- (d) determine the date on which a waiver should commence and end if it were granted.

In addition to inviting comments on the above issues, EPA recognizes that it has discretion in deciding whether to grant a waiver, as the statute provides that “[t]he Administrator ... *may* waive the requirements of [section 211(o)(2)] in whole or in part” (emphasis supplied) if EPA determines that the severe harm criteria has been met. EPA also recognizes that a waiver would involve reducing the national volume requirements under section 211(o)(2), which would have effects in areas of the country other than Texas, including areas that may be positively impacted by the RFS requirements. Given this, EPA invites comment on all issues relevant to deciding whether and how to exercise its discretion under this provision, including but not limited to the impact of a waiver on other regions or parts of the economy, on the environment, on the goals of the renewable fuel program, on appropriate mechanisms to implement a waiver if a waiver were determined to be appropriate, and any other matters considered relevant to EPA’s exercise of discretion under this provision.

Commenters should include data or specific examples in support of their comments in order to aid the Administrator in determining whether to grant or deny the waiver. Data that shows a quantitative link between the use of corn for ethanol and corn prices, and on the impact of the RFS mandate on the amount of ethanol produced, would be especially helpful.

Dated:

Robert J. Meyers
Principal Deputy Assistant Administrator
Office of Air and Radiation